UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 15886 and MERCHANT MARINER'S DOCUMENT 450 04 0880
Issued to: William Leon Graves

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2298

William Leon Graves

This appeal has been taken in accordance with Title 46 U.S.C. 239b and 46 CFR 5.30-1.

By order dated 23 July 1980, an Administrative Law Judge of the United States Coast Guard at Houston, Texas, revoked Appellant's seaman's documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleged that while holding the document and license above captioned, on or about 12 December 1979, Appellant was convicted in the 180th District Court of Harris County, Texas, a court of record, for the possession of marijuana in a quantity of more than four ounces.

The hearing was held at Houston, Texas on 15 July 1980.

At the hearing, Appellant elected to act as his own counsel and entered a plea of guilty, which was later changed to not guilty, to the charge and each specification.

The Investigating Officer introduced in evidence four exhibits.

In defense, Appellant offered in evidence eight exhibits.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and the specification had been proved. He then served a written order on Appellant revoking all licenses and documents issued to Appellant.

The entire decision was served on 28 July 1980. Appeal was timely filed on 19 August 1980 and perfected on 3 August 1981.

FINDINGS OF FACT

At all times pertinent to the case specifically from 11 October through 12 December 1979, Appellant was the holder of Merchant Mariner's Document 450-04-0880 and Uninspected Towing

Vessel Operator's License No. 15886, issued to him by the United States Coast Guard. He was arrested on 11 October 1979 and convicted on 12 December 1979, upon a plea of guilty, in the 180th District Court of Harris County, Texas, a court of record, of a narcotic drug law violation for the possession of more than four ounces of marijuana. On 23 June 1980, the Investigating Officer, Ltjg I.T. Luke, served Appellant with a charge of conviction for a narcotic drug law violation. At a hearing held on 15 July 1980, Appellant was advised by the Administrative Law Judge that he could offer evidence to show whether "this was just an experimentation with marijuana, like first-time incident of a first-time experimentation." Appellant did not offer such evidence, but did submit letters from former employers and other persons attesting to his character and stating that they did not know him "to use drugs or alcohol while aboard a boat."

BASES OF APPEAL

Appellant contends:

a. That the Administrative Law Judge's admission of the minutes of the 180th District Court was improper and violated Appellant's right to due process; and

b. That the Administrative Law Judge applied the law in a manner inconsistent with Congress's intent.

APPEARANCE ON APPEAL: Ross, Griggs, and Harrison; by Kent Westmoreland

OPINION

I

Appellant argues that the Judgment of Conviction, the Investigating Officer's Exhibit #3, was improperly admitted. He contends that, in addition to the attestation of the clerk of the court, the 180th District Court Judge's certification was required to properly admit the document. I disagree. It is well established in Federal administrative law practice that rigid rules of evidence do not apply to administrative proceedings. Sanctions may not be imposed unless supported by reliable, probative, and substantial evidence. The Administrative Law Judge properly admitted the Judgment of Conviction which met the requirement of 46 CFR 5.20-105 that the document be attested to by the clerk of the court and bear the seal of the court. No further proof is necessary to establish its admissibility. Appellant's argument regarding a Judge's attestation as required by 28 U.S.C. 1738 is without merit since that statute is not applicable to hearings conducted in accordance

with the Administrative Procedures Act (5 U.S.C. 551 et seq.).

II

Appellant argues that mere possession of narcotic drugs is treated as "a worse crime than addiction to them" because the statute exempts from its coverage addicts and users who provide satisfactory evidence that they have been cured. Appellant's point is not well taken. The provision of the law from which he quotes, 46 U.S.C. 239b(b)(2), provides a separate basis for revoking the seaman's documents of a person who uses or is addicted to the use of a narcotic drug. That provision does not require proof that a person has been convicted of a narcotic drug law violation. It merely requires proof that the person is a user or addict. The exemption for "cured" addicts applies only to this provision.

If a "cured" addict also happens to have been convicted of a narcotic drug law violation, action may still be taken against his license under the independent authority of 46 U.S.C. 239b(b)(1). Of course, the Investigating Officer would exercise discretion in deciding whether to prefer charges in such a case. Likewise, I would retain the authority to vacate the order of an Administrative Law Judge if I concluded that a charge should not have been brought.

III

Appellant contends that 46 CFR 5.03-10(a) is inflexible and inconsistent with the statute and the intent of Congress. The regulation provides that an Administrative Law Judge, after proof of a narcotic drug law conviction by a court of record, "shall enter an order revoking the seaman's licenses." Congress, at 46 U.S.C. 239b, provided authority to revoke the licenses of persons convicted "of a violation of the violation of the narcotic drug laws." The statute uses the word "may." Appellant argues that this word should permit the Administrative Law Judge, myself, and anyone else involved in the review of these proceedings, to impose a sanction less harsh than revocation. He also argues that the statute was intended by Congress to apply to smugglers, habitual users, and addicts, but not to mere "possessors." I disagree.

Since the enactment of the statute in 1954, I have consistently stated the word "may" applies only to the question of whether or not a hearing should be instituted. Once discretion had been exercised by bringing the matter before an Administrative Law Judge and a conviction within the meaning of the statute has been found proved, only one sanction, revocation, is permissible. Due to this statutory constraint, which is clarified in the legislative history, the Administrative Law Judge, myself and all

other reviewing officials are constrained from imposing a sanction "less harsh" than revocation, as requested by Appellant. See House Report No. 1559 of May 4, 1954, Senate Report No. 1648 of June 28, 1954, Hearings before the Senate Subcommittee on Interstate and Foreign Commerce regarding H.R. 8538, held on June 16, 1954, and Decision on Appeal No. 2067 (WHITLOW).

The general policy is that revocation follows conviction for a narcotic drug violation. Clemency, when appropriate, is provided for through the procedure set forth in 46 CFR 5.13. Furthermore, I may review the exercise of discretion by the Investigating Officer in bringing charges. In several cases I have exercised the statutory discretion on appeal. See Decisions of Appeal Nos. 1513 (ERDAIDE), 1514 (BANKS), 1594 (RODRIGUEZ), 2095 (SCOTT). Unlike the case at hand, in those cases the conviction had occurred several years before revocation of the individual's document and there was extensive evidence of rehabilitation.

Appellant was convicted of possessing more than four ounces of marijuana. This greatly exceeds the amount i would expect a first-time experimenter would possess. He was give the opportunity by the Administrative Law Judge to present any evidence which he felt might be helpful to his case, including any information regarding experimentation or first-time use. He offered no information regarding experimentation but told the Administrative Law Judge that the marijuana belonged to a friend. The only evidence offered by Appellant to show that he is no longer involved with narcotics consisted of letter from former employers and other persons who attested to his good character and stated that they did not know him to use drugs of alcohol while aboard a boat. Appellant's Coast Guard file contains no record of other narcotic-related offenses. I have considered all of this information on appeal.

The intent of the statute is to broaden the Coast Guard's jurisdiction to take action against licenses and seaman's documents held by persons who violate narcotic-drug laws, whether or not the persons are serving aboard a vessel at the time of the violation. The statutory language is broad and did not omit from its coverage any class of "narcotic-drug law violator," such as "mere possessors." Marijuana was specifically included under the definition of "narcotic drug" by 46 U.S.C. 239a and Appellant's conviction for possession of the drug places him within the coverage of the statute. He was given the opportunity to present evidence favorable to his position but he failed to present sufficient credible evidence to persuade me to take any action on his behalf.

After reviewing the record, including Appellant's testimony

and his character references, I am satisfied that the Investigating Officer did not abuse his discretion by preferring charges in this case.

CONCLUSION

The Investigating Office did not abuse his discretion by preferring charges.

The Administrative Law Judge properly revoked Appellant's license and document after finding that Appellant had been convicted in a Texas court of record for the violation of a narcotic drug law. Insufficient mitigating circumstances exist to justify vacating the order of the Administrative Law Judge.

ORDER

The order of the Administrative Law Judge dated at Houston, Texas, on July 23, 1980, is AFFIRMED.

J.S. GRACEY
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 6th day of April 1983